APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

THE COMMONWEALTH OF PENNSYLVANIA,
Petitioner in No. 79-1025

vs.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, DOUGLAS M. COSTLE, Administrator,
Respondent

APPALACHIAN POWER COMPANY, a corporation, and OHIO POWER COMPANY, a corporation; and MONONGAHELA POWER COMPANY,
Intervenors

THE STATE OF WEST VIRGINIA EX REL. AIR POLLUTION CONTROL COMMISSION,
Intervenor

COUNCIL OF SENIOR WEST VIRGINIANS, INC., GROUP AGAINST SMOG AND POLLUTION, INC., WEST VIRGINIA HIGHLANDS CONSERVANCY, INC., MOUNTAIN COMMUNITY UNION, INC. MONONGAHELA COUNTY CITIZENS FOR CLEAN AIR and WEST VIRGINIA CITIZENS ACTION GROUP, INC.,
Petitioners in No. 79-1026

vs.

DOUGLAS COSTLE, Administrator, United States Environmental Protection Agency, and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents

APPALACHIAN POWER COMPANY, a corporation, and OHIO POWER COMPANY, a corporation; and MONONGAHELA POWER COMPANY,

Intervenors

THE STATE OF WEST VIRGINIA EX REL. AIR POLLUTION CONTROL COMMISSION,

Intervenor

THE COMMONWEALTH OF PENNSYLVANIA,

Petitioner in No. 80-2722

vs.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, DOUGLAS M. COSTLE, Administrator,

Respondent

MONONGAHELA POWER COMPANY and OHIO POWER COMPANY,

Intervenors

THE STATE OF WEST VIRGINIA ex rel. WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION,

Petitioner in No. 81-1343

vs.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, DOUGLAS M. COSTLE, Administrator,

Respondent

MONONGAHELA POWER COMPANY and OHIO POWER COMPANY,

Intervenors

Petition for Review
Environmental Protection Agency

Argued
September 21, 1981

Before: Aldisert, Higginbotham, and Sloviter, *Circuit Judges.*

JUDGMENT ORDER

After considering the contentions of the petitioners, the intervenors and of the United States Environmental Protection Agency, it is

ADJUDGED and ORDERED that the petition for review of the final order of the Environmental Protection Agency be and is hereby denied.

Costs taxed against petitioners.

BY THE COURT,
s/Aldisert
Circuit Judge

Attest:
s/Sally Mrvos
Sally Mrvos, *Clerk*
Dated: Sep. 22, 1981

APPENDIX B

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45 Fed. Reg. 74478 (November 10, 1980).

40 CFR Part 52.

[A-3-FRL 1662-3].

Approval of Revision of the State of West Virginia Implementation Plan.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 9, 1978, (43 FR 52239) the Administrator approved as a revision to the West Virginia State Implementation Plan (SIP), amendments to the State's Regulation X dealing with sulfur dioxide (SO_2) emissions from electric power generating plants. In response to petitions for review in the United States Court of Appeals for the Third Circuit, EPA reconsidered the air quality impacts of the revised emission limitations for two of the power stations affected by the revisions. On November 7, 1979, (44 FR 64439) on the basis of its reconsideration, EPA proposed to approve again the emission limitations for the two power plants. EPA today takes final action to approve again the emission limitations for the two power plants as adequate to ensure attainment and maintenance of the primary national ambient air quality standard for SO_2. EPA has determined, however, that these limitations are not adequate to ensure attainment and maintenance of the secondary national ambient air quality

standard for SO_2. In a separate notice published elsewhere in today's Federal Register, EPA is informing the State of this plan deficiency and requiring the State within nine months to submit a control strategy that demonstrates attainment and maintenance of the secondary SO_2 standard.

EFFECTIVE DATE: December 10, 1980.

ADDRESSES: Copies of the SIP revision and supporting material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

ATTN: Patricia Sheridan, Public Information reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. William Belanger, Air Programs Branch (3AH13), U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, telephone (215) 597-8188.

SUPPLEMENTARY INFORMATION:

I. Background

West Virginia amended its Air Pollution Control Commission Regulation X, sulfur dioxide (SO_2) emission controls for power plants, and submitted the amended regulation to EPA in January 1978; further amendments were submitted during the course of the year. EPA approved

most of the changes. 43 FR 52239 (November 9, 1978). In January 1979, the Commonwealth of Pennsylvania and six citizens' organizations petitioned the United States Court of Appeals for the Third Circuit to review EPA's approval so far as it applied to the Mitchell and Harrison power stations. In response to these petitions, EPA reviewed the record of its action and at EPA's request the Court remanded two issues to EPA for reconsideration: dispersion modelling of the air quality impact of emissions from the two power stations, and an analysis of the impact of the Harrison station emissions on maximum allowable increases ("increments") under EPA's regulations for the prevention of significant degradation of air quality ("PSD"). The Court allowed the revisions to remain in effect while EPA reviewed these two issues.

The SO_2 emission limit for the Harrison station was an interim limit effective until November 8, 1979, or until EPA promulgated final regulations concerning credit for tall smokestacks, whichever occurred first. 42 U.S.C. 7423. As EPA has not promulgated such regulations, the interim Harrison limitation would have expired during the remand period; EPA therefore extended Harrison's interim emission limit until such time as EPA adopts a permanent limit. 45 FR 39253 (June 10, 1980).

On November 7, 1979, EPA proposed to reapprove the Regulation X amendments remanded to it for reconsideration. On the basis of its review and consideration of comments submitted to it, EPA today takes final action to approve those amendments as a revision of West Virginia's SIP for attainment and maintenance of the primary national ambient air quality standards ("NAAQS") for SO_2.

EPA's review found, however, that West Virginia's control strategy does not demonstrate attainment and maintenance of the secondary SO_2 standard. Dispersion modelling using the CRSTER model with the most recent five years of meteorological data predicted a violation of the three-hour secondary SO_2 standard under meteorological conditions which occurred in one of those years. As a result, the State's control strategy is not adequate to ensure attainment of the secondary SO_2 standard. In a separate notice in today's Federal Register, EPA is informing the State of this deficiency. EPA is also calling on the State to submit within nine months either a revision of its control strategy or a demonstration that the current control strategy is adequate to protect the secondary SO_2 standard. If the State determines that additional emission limitations are needed to protect the secondary SO_2 NAAQS, the State must also prescribe a schedule for compliance with the new limits within a reasonable time.

Section 110(a) (2) (A) of the Clean Air Act and EPA regulations require that a compliance schedule provide for attainment of the secondary standard within a reasonable period of time. EPA regulations provide that a state may consider social, economic and technological factors in determining a reasonable schedule for attainment of secondary standards. 40 CFR 51.13(b) (1979).

EPA is aware that the State and the representatives of the utility owners, coal companies and coal miners have alleged that severe social and economic disruption will occur if the power stations are required to reduce their emissions below the levels approved today as adequate for primary standard attainment. The Agency recognizes that some methods of attaining the secondary SO_2 standard, such as switches to low sulfur coal, could result in localized

job losses in the coal mining industry and related businesses. If the State determines that additional emission limitations are necessary to demonstrate attainment of the secondary SO_2 standard, EPA encourages the State to take into account potential adverse employment effects when establishing a compliance schedule to carry out any necessary secondary SO_2 standard control strategy, and to consider control strategies and compliance schedules that will avoid or minimize social and economic disruption. If desired by the State, EPA personnel will work with the State to develop approaches that ensure secondary SO_2 standard attainment within a reasonable time while minimizing any adverse employment impacts.

II. Control Strategy Demonstration

In its November 7, 1979, notice proposing approval of this revision, EPA noted that its original action and proposed reapproval were based on its conclusion that the one modelled violation of the secondary SO_2 standard was so unlikely to occur that the violation should not be used as a basis for establishing emission limitations for the power plants. EPA's evaluation of the probability of the violation was based on a statistical analysis that related worst-case meteorology to sulfur variability in coal and calculated the likelihood that worst-case meteorology would coincide with worst-case sulfur content.

EPA has since concluded that the use of such statistical techniques should be evaluated for general Agency use and subject to public comment before being used by the Agency to analyze SIP revisions. Since the Agency has not yet completed review of statistical methodologies for general use, it has determined that it would be inappropriate to approve the instant revision based on a statis-

tical analysis. Under the Agency's current policy and modelling guidelines, the State's control strategy does not demonstrate attainment and maintenance of the secondary SO_2 standard.

III. PSD Analysis

The Harrison plant emission limit was amended after June 19, 1978, the date on which EPA's PSD regulations applied in some respects to SIP revisions. EPA therefore agreed to model the plant's impact on affected clean air areas. The analysis showed that the plant's emissions would not cause degradation of air quality in excess of the PSD increments applicable in nearby Class II areas or in more distant Class I areas.

IV. Public Comments

Parties to the lawsuit concerning these emissions limits submitted extensive technical comments on EPA's proposed approval. These comments and EPA's responses are set forth in a rationale document which is available to interested members of the public at the addresses given at the beginning of this Notice.

V. EPA Evaluation

West Virginia's proposed SIP revision will attain and maintain the primary SO_2 NAAQS and to this extent meets the requirements of Section 110(a) of the Clean Air Act and 40 CFR Part 51.

VI. Final Action

The Administrator approves the above-described amendments of West Virginia's Air Pollution Control Commission Regulation X as a revision to the State's Implementation Plan to attain and maintain the primary national ambient air quality standard for sulfur dioxide.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged in civil or criminal proceedings to enforce these requirements.

The Administrator has reviewed this regulation and determined that it is a specialized regulation not subject to procedural requirements for significant regulations under Executive Order 12044.

(42 U.S.C. 7401-642)

Dated: October 31, 1980.

Douglas M. Costle,
Administrator

Note:—Incorporation by reference of the West Virginia State Implementation was approved by the Director of the Federal Register on July 1, 1980.

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart XX-West Virginia

1. Section 52.2520, paragraph (c)(3), is added as follows:

§52.2520 Identification of plan.

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(c) The plan revisions listed below were submitted on the dates specified.

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(3) Amended Sections 3.01(2) and 3.03(1) of Regulation X (to prevent and control air pollution from the emission of sulfur oxides), submitted on January 25, 1978 and amended September 13, 1978 by the Governor.

2. Section 52.2522, paragraph (e), is added as follows:

§52.2522 Approval status.

* * * * * * * * *

(e) The Administrator approves the amended Sections 3.01(2) and 3.03(1) of West Virginia Air Pollution Control Commission Regulation X submitted January 25, 1978 and amended September 13, 1978, as a plan for attainment of the primary SO_2 NAAQS. The Administrator does not approve the State's control strategy for attainment and maintenance of the secondary SO_2 NAAQS submitted on those dates, so far as it applies to the Mitchell and Harrison power stations.

[FR Doc 80-35060 Filed 11-7-80 8:45 am]

Billing Code 6560-38-M

APPENDIX C

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45 Fed. Reg. 74520 (November 10, 1980).

40 CFR Part 52.

[A-3-FRL 1662-5].

Deficiency in West Virginia's State Implementation Plan.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency in State implementation plan.

SUMMARY: As the result of EPA's review of West Virginia's Regulation X, as it applies to two power plants, EPA has determined that West Virginia's sulfur dioxide air pollution control plan is not adequate to ensure attainment and maintenance of the secondary national ambient air quality standard for SO_2. Therefore, the Administrator requires the State to submit a control strategy and demonstration of attainment.

DATE: The control strategy and demonstration of attainment should be submitted within nine months from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Sheldon Novick, Regional Counsel, Environmental Protection Agency Region III, The Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106 (215-597-9821).

SUPPLEMENTARY INFORMATION: On November 9, 1978, EPA approved amendments to West Virginia's Air Pollution Control Commission Regulation X as a revision of the State Implementation Plan (SIP) for sulfur dioxide control. Those amendments as they applied to the Mitchell and Harrison power stations were challenged in the United States Court of Appeals for the Third Circuit by the Commonwealth of Pennsylvania and six citizens' organizations. As part of this litigation, EPA again reviewed West Virginia's Regulation X as it applies to the two power plants, and determined that the SIP revision is adequate to ensure attainment and maintenance of the primary SO_2 standard. EPA's approval is announced in a notice of final action published elsewhere in today's Federal Register. In the course of its review, however, EPA determined that West Virginia's SO_2 control strategy is not adequate to ensure attainment and maintenance of the secondary national ambient air quality standard for SO_2 ("NAAQS"). Dispersion modelling of the emission limits now in effect for the Mitchell and Harrison power plants predicts a violation of the secondary SO_2 NAAQS at those limits.

When EPA gives notice of such a deficiency, as it does today, the Clean Air Act requires the State to prepare and submit a revision of its SIP to correct the deficiency. 42 U.S.C. 7410(a)(2)(H). The Administrator believes West Virginia will need at least nine months to evaluate its control strategy, enact any necessary regulations and submit a control strategy that demonstrates attainment of the secondary SO_2 standard. The Administrator therefore requires the State to submit a control strategy and demonstration of attainment within nine months from the date of publication of this notice. EPA regulations call for

consultation with the State concerning the time needed for this submission. 40 CFR 51.6(b), and the Administrator therefore will consider any request from the State for additional time.

In the next nine months, West Virginia must reassess its SO_2 control strategy and adopt any additional regulations that may be needed to protect the secondary SO_2 NAAQS. If such new regulations are needed, the State must also prescribe a schedule for compliance within a reasonable time.

Section 110(a)(2)(A) of the Clean Air Act and EPA regulations require that a compliance schedule provide for attainment of a secondary NAAQS within a reasonable period of time. EPA regulations provide that a State may consider social, economic, and technological factors in determining a reasonable schedule for attainment of secondary standards. 40 CFR 51.13(b).

EPA is aware that the State and the representatives of the utility owners, coal companies and coal miners have alleged that severe social and economic disruption will occur if the power stations are required to reduce their emissions below the levels approved today as adequate for primary standard attainment. The Agency recognizes that some methods of attaining the secondary SO_2 standard, such as switches to low sulfur coal, could result in localized job losses in the coal mining industry and related businesses. If the State determined that additional emission limitations are necessary to demonstrate attainment of the secondary SO_2 standard, EPA encourages the State to take into account potential adverse employment effects when establishing a compliance schedule to carry out any necessary secondary SO_2 standard control strategy, and to consider

control strategies and compliance schedules that will avoid or minimize social and economic disruption. If desired by the State, EPA personnel will work with the State to develop approaches that ensure secondary SO_2 standard attainment within a reasonable time while minimizing any adverse employment impacts.

The details of the deficiency noted by EPA are more fully described in documents supporting EPA's final action approving the West Virginia SIP revision as adequate to attain and maintain the primary SO_2 standard. The documents are available at the addresses given in the notice of final action, published elsewhere in today's Federal Register.

Dated: October 31, 1980.

Douglas M. Costle,
Administrator

[FR Doc. 80-35061 Filed 11-7-80; 8:45 am]

Billing Code 6560-38-M